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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,599	03/19/2002	Robert Eugene Ryan	RYAN3004/REF	6460

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BACON & THOMAS, PLLC  
625 SLATERS LANE  
FOURTH FLOOR  
ALEXANDRIA, VA 22314

EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

926599

Applicant(s)

RYAN et al

Examiner

MBL

Group Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 3/19/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-7, 12-18 is/are pending in the application.
- Of the above claim(s) 1-7, 12-18 is/are withdrawn from consideration.
- ☐ Claim(s) 1-7, 12-18 is/are allowed.
- ☒ Claim(s) 1-7, 12-18 is/are rejected.
- ☐ Claim(s) 1-7, 12-18 is/are objected to.
- ☐ Claim(s) 1-7, 12-18 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 1
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 1616

Examiners do not understand the CM reference; it is not in English.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4, 13, 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Appropriate" is indefinite, as NO guidelines or limitations identify in what sense appropriate. Claim 4 includes a trade named compound, which should be identified generically, without use of parentheses. It needs to be stated as to what the effective amount is effective for, at claims 15, 16.

Claims 15-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The methods set no parameters for one to determine the quality or quantity of treating or repelling an unspecified parasite and unspecified degree of infestation in (claim 15, 16) unspecified animals.

Claims 1-7, 12-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly

Art Unit: 1616

connected, to make and/or use the invention. Piperonyl, contrary to specification is not seen as a food and flavor compound – please validate structure see p. 836 of Merck.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey-AU 9051365 in view of Van Tonder – 5,194,264, Hink et al 4,933,371 and Merck '68.

Harvey shows Fly, Blow Fly, infestation can be treated controlled, by the method of applying a composition to sheep, in effective amount, comprising pine oil, and pyrethroids. However, the added components are not included. Van Tonder shows such dips, aqueous (col. 5, 6) include pyrethroids, synergists, piperonyl but oxide, and surfactant in order to provide not only an ecto parasitic composition, but also a shampoo (Example 4). No Lanolin or essential oils were shown, but the same use of pyrethroids as is known, and shown by Harvey is taught, for ectoparasite fly control on sheep (col. 6, bottom, col. 7, top, bottom). Hink further includes Lanolin, with a surfactant water and a natural oil source of Linalool and Limonene (Example I, VIII) and as a form (sheep) animal dip (Example XVIII, XIX, XX) to control flies. Elyenol, terpineol may be added; these are the actives of the instant Cajeput oil, Peppermint oil, Eucalyptus, clove (Merck). Lemongrass also has the citronellal, geraniol, limonene, citral (col. 7, line 32-41). Hink shows advantages (col. 1, lines 13-22) of natural compositions.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize an ectoparasiticial composition, to use one of Harvey, if flies ever of concern, adjusted for control of added pests; fleas, ticks, by adding emulsifiers and synergistic, and if desired. Natural oil components, shown by Hink as effective to control the same pests, but with natural compounds replacing the synthetics as of Harvey, Van Tonder.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pest and crop of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve control over pests or crops as is well known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

Art Unit: 1616

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR  
February 20, 2003



NEIL S. LEVY  
PRIMARY EXAMINER